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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MICHAEL HOLMBERG,

7 Plaintiff,

8 v.

9 CHRISTINE O. GREGOIRE, et al.,

10 Defendants.

No. 08-5775 RJB/KLS

ORDER GRANTING DEFENDANTS'
MOTION TO STAY DISCOVERY

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12 Before the Court is Defendants' motion to stay discovery pending the Court's resolution
13 of Defendant's motion to dismiss. Dkt. 45. For the reasons stated below, the Court finds that the
14 motion should be granted.
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16 **PROCEDURAL BACKGROUND**

17 Plaintiff Michael Holmberg is a Washington Department of Corrections ("DOC") inmate
18 currently incarcerated at McNeil Island Corrections Center (MICC). Dkt. #44, First Amended
19 Complaint ¶ 4. On January 14, 2009, he filed a Civil Rights Complaint under 42 U.S.C. § 1983
20 alleging that the Defendants retaliated against him for exercising his protected rights in violation
21 of the First Amendment. Dkt. 4, pp. 6-7.
22

23 The Defendants moved to dismiss this complaint asserting numerous defenses including:
24 failure to state a claim, failure to allege personal participation, improperly named Defendants
25 (State of Washington/Department of Corrections), and qualified immunity. The court ordered
26 Mr. Holmberg to amend his complaint to cure pleading deficiencies including the removal of

ORDER GRANTING MOTION TO STAY DISCOVERY - 1

1 improper Defendants Gregoire and Washington Department of Corrections. Dkt. # 43. On July
2 17, 2009, Mr. Holmberg filed an amended complaint which adds new Defendants, Harold Clarke
3 and Jim Thatcher, and a new, supplemental retaliation claim alleged to have occurred between
4 May and July 2009, during the pendency of this action. Dkt. 44.

5 Defendants move for dismissal of Plaintiff's claims pursuant to Fed. R. Civ. Proc.
6 12(b)(6), arguing that the retaliation claim should be dismissed for failure to state a claim, that
7 certain defendants should be dismissed for failure to adequately allege personal participation
8 and/or lack of personal jurisdiction. Dkt. 45, p. 3. Defendants also move for a "continuance of
9 the stay of discovery"¹ pending the Court's ruling on this motion and a determination of what
10 claims and parties will survive past the pleading stage. *Id.*, p. 10.

11 **DISCUSSION**

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13 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*,
14 863 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit
15 discovery. Fed. R. Civ. P. 26(c). A court may relieve a party of the burdens of discovery while
16 a dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), amended at
17 906 F.2d 465 (9th Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984).

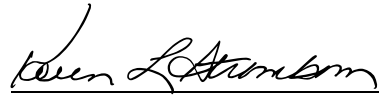
18
19 It is necessary for this court to resolve Defendants' Motion to Dismiss to determine what
20 claims and Defendants survive the pleading stage. This is particularly true now that Plaintiff has
21 filed an amended complaint adding new defendants and claims. Defendants should not face the
22 burden and expense of responding to discovery as to claims and Defendants that may not survive
23 the pleading stage.
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¹ The court previously stayed discovery in this matter pending a ruling on Defendants' first motion to dismiss (Dkt. 19). See Dkt. 38.

1 Accordingly, all discovery in this matter shall be **STAYED** pending further order of this
2 Court.

3 DATED this 5th day of October, 2009.

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6 Karen L. Strombom
7 United States Magistrate Judge
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